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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

No. 86-

ZENITH RADIO CORPORATION and
NATIONAL UNION ELECTRIC CORPORATION,
Petitioners,

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI OR IN THE ALTERNATIVE OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Whether this Court's prior decision in this case required the Court of Appeals to conclude on remand that because petitioners' conspiracy claims under Section 1 of the Sherman Act failed, petitioners' individual and conspiracy claims under the Antidumping Act of 1916 must also fail?

2. Whether this Court reviewed the record evidence and determined that it was insufficient to withstand summary judgment on all claims under both Section 1 of the Sherman Act and the Antidumping Act of 1916?

3. Whether the legal standard that governs the evaluation of evidence presented in support of a claim of a below-cost pricing conspiracy under Section 1 of the Sherman Act — where evidence of conspiratorial price-fixing in a foreign market has been held by this Court to have little relevance — is identical to the standard that governs the evaluation of evidence presented in support of both individual and conspiracy claims under the Antidumping Act of 1916?

4. Whether this Court's prior decision in this case questioning whether respondents had a rational motive to conspire to engage in below-cost pricing prohibited by Section 1 of the Sherman Act necessarily required rejection of petitioners' claims that respondents had engaged in individual acts of dumping and a conspiracy to dump in violation of the Antidumping Act of 1916?

PARTIES TO THE PROCEEDING

Petitioners are Zenith Radio Corporation ("Zenith") and National Union Electric Corporation ("NUE").

Respondents are Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, Matsushita Electric Trading Co., Matsushita Electronics Corporation, Toshiba Corporation, Toshiba America, Inc., Hitachi, Ltd., Hitachi Kaden Kabushiki Kaisha, Hitachi Sales Corporation of America, Mitsubishi Electric Corporation, Mitsubishi Electric Sales America, Inc., Mitsubishi Corporation, Mitsubishi International Corporation, Sanyo Electric Co., Ltd., Sanyo Electric Trading Co., Ltd., Sanyo Electric, Inc., Sanyo Manufacturing Corporation, Sharp Corporation, and Sharp Electronics Corporation.

DESIGNATION OF CORPORATE RELATIONSHIPS

Zenith has no parents or non-wholly-owned subsidiaries. NUE is a wholly-owned subsidiary of White Consolidated Industries, Inc., which in turn is a wholly-owned subsidiary of A. B. Electrolux. NUE has no subsidiaries.

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PETITION FOR A WRIT OF CERTIORARI OR IN THE ALTERNATIVE OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners respectfully request that a writ of certiorari be issued to review the opinion and judgment of the Court of Appeals for the Third Circuit or, in the alternative, that a writ of mandamus be issued to the Court of Appeals because the Court of Appeals misconstrued this Court's mandate.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 807 F.2d 44 (3d. Cir. 1986), and is set out in the Appendix to this petition at A-3.[1] The prior opinions of the Court of Appeals on the Sherman Act and Antidumping Act claims are reported at 723 F.2d

1. References to the Appendix are cited herein as "A-_____."

238 (3d Cir. 1983), and 723 F.2d 319 (3d Cir. 1983), respectively. The proceedings in the Court of Appeals took place on remand from this Court following the decision in *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. ____, 106 S.Ct. 1348 (1986).

JURISDICTION

The judgment of the Court of Appeals was entered on December 12, 1986. 807 F.2d 44 (3d Cir. 1986), A-1. This Court has jurisdiction to review the judgment of the Court of Appeals by writ of certiorari pursuant to 28 U.S.C. § 1254(1), and by writ of mandamus pursuant to 28 U.S.C. § 1651 and Rules 26 and 27 of this Court. The Court of Appeals has been served with a copy of this petition pursuant to Rule 27.2(b) of this Court. The petition is timely under 28 U.S.C. § 2101(c) and Rules 20.2 and 20.4 of this Court.

STATUTE INVOLVED

The Antidumping Act of 1916, 15 U.S.C. § 72, provides in pertinent part as follows:

> It shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: *Provided*, That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of

restraining or monopolizing any part of trade and commerce in such articles in the United States.

* * *

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.[2]

STATEMENT OF THE CASE

A. History of the Litigation

1. Prior to the Decision in Matsushita

This litigation began when petitioner NUE filed suit against the respondent Japanese television manufacturers after NUE was forced to abandon its television manufacturing business. Petitioner Zenith filed its complaint following Matsushita's acquisition of Motorola's consumer electronics division.[3] Petitioners charged respondents with violations of Section 1 of the Sherman Act, 15 U.S.C. §1, violations of other antitrust statutes, and violations of the Antidumping Act of 1916, 15 U.S.C. § 72.

In 1981, after years of pretrial disputes and protracted discovery on respondents' pending counterclaims, the District Court addressed petitioners' claims on the merits. In two separate decisions the District Court granted summary judgment dismissing the claims under the Antidumping Act, 494 F. Supp.

2. Petitioners' Complaints also allege violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, Section 73 of the Wilson Tariff Act, 15 U.S.C. § 8, Section 2(a) of the Robinson Patman Act, 15 U.S.C. § 13(a), and Section 7 of the Clayton Act, 15 U.S.C. § 18.

3. After Zenith's suit was filed, respondents petitioned the Judicial Panel on Multidistrict Litigation to move the Zenith case to New Jersey. The Panel, however, transferred NUE's action from the District of New Jersey to the Eastern District of Pennsylvania, where it was consolidated with Zenith's action.

1190 (E.D. Pa. 1980), and under the Sherman Act. 513 F. Supp. 1100 (E.D. Pa. 1981).

Petitioners appealed these determinations to the Court of Appeals. On December 5, 1983, that Court reinstated the antitrust claims. 723 F.2d 238 (3d Cir. 1983). On the same day, in a separate opinion and judgment, the Court of Appeals also held that petitioners had presented sufficient evidence of individual violations of the Antidumping Act and of a conspiracy to violate that statute to defeat respondents' motions for summary judgment. 723 F.2d 319 (3d Cir. 1983).

2. The Matsushita Decision

Following the Third Circuit's decisions, respondents petitioned this Court for a writ of certiorari with respect to the antitrust judgment. This Court granted certiorari to review that ruling. Respondents did not seek review of the separate Antidumping Act judgment.

On March 26, 1986, this Court decided *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. ____, 106 S.Ct. 1348 (1986). In that decision, the Court reversed the Third Circuit and stated that it perceived no "apparent motive" for respondents to have entered into an anticompetitive, below-cost pricing conspiracy prohibited by the Sherman Act. The Court concluded that, because "antitrust law limits the range of permissible inferences from ambiguous evidence," 475 U.S. at __, 106 S.Ct. at 1357, the Court of Appeals should determine whether the evidence was legally sufficient to sustain the Sherman Act claims.

The Court's decision was expressly limited to a determination of the legal standard applicable to evidence of a conspiracy to engage in below-cost pricing under the Sherman Act.[4] The Court noted that such pricing requires that those engaging in it suffer losses for some period of time. The Court further noted

4. Stating that it "review[ed] only the standard," the Court cautioned that it did not purport to address "the weight assigned to particular pieces of evidence" and therefore found it unnecessary to state the facts in great detail. 475 U.S. at _____, 106 S.Ct. at 1351.

that rational businessmen would enter into a conspiracy to price below cost only if they could reasonably expect to acquire monopoly power in the foreseeable future that would enable them to recoup those losses. In the absence of a showing that such monopoly power could be acquired, the Court held that a Sherman Act conspiracy could not be inferred from otherwise ambiguous evidence.

The Court also held that petitioners' direct evidence that respondents had entered into a conspiracy to charge supracompetitive prices in Japan was not relevant to any claims under the Sherman Act of a below-cost pricing conspiracy in the United States market. It determined that the central dumping aspects could not be considered in the Court's limited review of the Sherman Act conspiracy claims, pointing out that conspiratorial pricing in the closed Japanese market could not inflict "antitrust" injury in the United States and was therefore separate collusive activity not recognized as relevant to the legal standard applicable to the Sherman Act conspiracy claims under review.

The Court noted that petitioners also had stated claims under the Antidumping Act of 1916 and that the Third Circuit had upheld those claims. The Court expressly declined the invitation to review that decision and judgment, despite respondents' argument that a decision on the Sherman Act claims should somehow govern the disposition of the Antidumping Act claims. 475 U.S. at ____ n.3, 106 S.Ct. at 1352 n.3. It therefore had no occasion to address any different economic motive or intent the respondent Japanese television manufacturers might have had to engage in dumping, *i.e.*, unilateral sales of products in the United States at prices below the prices at which they sold such products in their home market, or the motive to conspire to engage in dumping. The Court remanded the case to the Court of Appeals for a determination whether any other record evidence supported petitioners' Sherman Act claims under the legal standard this Court had held applicable to those claims.

3. The Decision on Remand

Prefacing its opinion on remand with the statement that it found this Court's directions "ambiguous" and "somewhat confusing," 807 F.2d at 46, A-6, the Third Circuit treated the remand as largely pointless because, as it observed, "the Supreme Court had the very same summary judgment record before it that [the Court of Appeals] had considered, and does exercise the same plenary review of the propriety of the district court summary judgment." 807 F.2d at 46, A-6. It concluded that the decision in *Matsushita* required that it dismiss *all* of petitioners' claims — the Antidumping Act claims as well as the Sherman Act claims.[5] It reached this conclusion notwithstanding the fact that this Court had considered only the antitrust claims and that this Court's opinion and mandate were limited to that portion of the litigation. The Court of Appeals stated that it was bound by "the law of the case" and concluded:

> Since the Sherman Act conspiracy charge failed in the Supreme Court, our holding on the Antidumping Act conspiracy claim must fail with it. The Antidumping Act claims against individual Japanese manufacturers are equally vulnerable. . . . The summary judgment in favor of each defendant will therefore be affirmed. . . ." 807 F.2d 44, 49, A-11.

The Court of Appeals engaged in no analysis whatsoever of the different economic rationales for dumping as contrasted with predatory, below-cost pricing, nor did it consider the different purpose and scope of the Antidumping Act. The Third Circuit's ruling rested entirely upon its interpretation and application of this Court's antitrust ruling in *Matsushita*.

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5. The Third Circuit's decision, however, does not end this litigation. Two years after Zenith filed its complaint, respondents filed counterclaims seeking millions of dollars in alleged damages from Zenith for, among other things, its pursuit of this litigation. The counterclaims were the subject of voluminous discovery by respondents over a period of three years. Thus, while the Third Circuit's order summarily dismissed all of petitioners' claims, the counterclaims against Zenith are still pending below.

B. Petitioners' Antidumping Act Claims

Petitioners have charged respondents with dumping, an international trade practice prohibited by the Antidumping Act of 1916, 15 U.S.C. § 72. Dumping is the sale of imported products in this country by foreign producers at prices that are substantially below the prices they charge in their foreign home markets. The Act prohibits such international price discrimination committed either independently by a single company or conspiratorially by a group of companies with the intent to injure an American industry. Petitioners alleged that respondents engaged in both individual and conspiracy violations of the Antidumping Act.

As the Court of Appeals recognized when it first considered petitioners' Antidumping Act claims, substantial evidence exists showing individual acts of dumping and the conspiracy to dump. 723 F.2d at 329. It acknowledged on remand that "[respondents'] prices could be found to have been dumping prices." 807 F.2d at 48, A-10. The United States Department of Treasury investigated respondents' pricing practices and in 1970 found that respondents were selling televisions in this country at less than fair value, far less than the prices they charged in Japan. A-42. Petitioners presented detailed, model-by-model price comparisons between respondents' domestic and export models. This evidence established that prices in Japan exceeded those in the United States by almost 60 percent. Because respondents' United States prices were far below the competitive pricing levels of their American competitors, the United States manufacturers suffered an alarming loss of business, their prices in this country fell sharply, and their profits eroded and then disappeared. Further, as this Court observed in *Matsushita*, petitioners presented direct evidence that respondents had conspired to charge supra-competitive prices in Japan. 475 U.S. at ____, 106 S.Ct. at 1361.

The evidence further established that respondents acted to conceal their illegal dumping activities. 723 F.2d at 311. They deceived both the Japanese and United States governments concerning their actual United States prices, concealed their actual

prices from United States customs authorities, and brought hundreds of millions of dollars of products through United States customs on false entry documents and invoices. Respondents and their importers intentionally paid extra *ad valorem* duties on higher, fictitious prices, and systematically refunded money to importers through secret Swiss, Hong Kong and other foreign bank accounts to avoid the imposition of antidumping duties. Respondents thus lied to the United States Department of Treasury in the administrative antidumping investigation, falsely reported prices to avoid a finding of dumping, and, when dumping margins were found even on the basis of falsely inflated import prices, attempted to minimize antidumping duties by continuing to report false prices thereafter.

That these activities seriously injured the United States industry is not disputed. Counsel for respondents conceded this fact when this case was previously before this Court. (Tr. of Oral Arg., No. 83-2004, at 48.) Further, the United States Tariff Commission (now called the International Trade Commission) found in 1971 that the United States television industry had been injured by the sale in this country of televisions from Japan at less than fair value. A-46. The Treasury Department's dumping finding was based on the Tariff Commission's unanimous finding that the United States television industry ". . . is being injured by reason of the importation of television receiving sets, monochrome and color, from Japan sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended" A-46, and its specific finding that:

> . . . [t]he ability of the Japanese suppliers to undersell domestic producers in the U.S. market appears to have been significantly enhanced as a result of the selling of Japanese sets at less than fair value. (A-50-51)

A further study by the International Trade Commission in 1977 found that the United States television industry continued to sustain severe injury by reason of imports. Producers and assemblers of television receivers fell by one-third in eight years (U.S. International Trade Commission, Investigation No. TA-201-19, March 1977). During the same period the number of

plants declined by half and even the remaining establishments were seriously under-utilized. The Commission further found that many thousands of jobs had been lost because of imports and the few surviving United States companies were in a loss or at best a break-even position. This erosion and destruction of the industry has continued.[6] Today only two manufacturers remain, Zenith and RCA.[7] Last year, GE acquired RCA mainly for its broadcasting and businesses other than the profit-starved television segment. Today television imports from the Far East have a "73.2% share of total color supply" in the United States. *Television Digest*, Vol. 29, No. 9 at 13 (March 2, 1987).

Finally, petitioners presented evidence that respondents were able to achieve these results without sustaining out-of-pocket losses in their combined operations in the United States and Japanese markets. The evidence indicates that respondents made overall profits and maintained an acceptable rate of return throughout the dumping period. Respondents' low prices in the United States coincided with expansion of their production facilities far beyond the capacity needed to serve the Japanese market, which was closed to competition from non-Japanese manufacturers by a system of tariff and non-tariff barriers. By dumping their excess output in the United States, respondents were able to enjoy the cost savings associated with large-scale operations.

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6. Respondents' activities injured United States industry in a more insidious way as well. Respondents' dumping left American manufacturers in a weakened condition at the precise time that rapid technological innovation and new product development — *e.g.* videocassette recorders, stereo television, and videodisc players — required large capital investment. As a result, respondents are now completely free from American competition with respect to products such as videocassette recorders and cameras.

7. Zenith's dividends declined steadily as imports increased, and Zenith has been unable to pay dividends since 1982.

REASONS FOR GRANTING THE WRIT

I. The Decision in *Matsushita* Did Not Compel Rejection of Petitioners' Dumping Evidence, Nor Did It Justify Summary Dismissal of Their Antidumping Act Claims.

The Court of Appeals mistakenly interpreted *Matsushita* to require rejection of petitioners' evidence of individual acts of dumping and conspiracy to dump, as well as the evidence offered in support of their Sherman Act conspiracy claims. As a consequence, the Court of Appeals believed that *Matsushita* required summary dismissal of petitioners' dumping claims. The Court of Appeals ignored the fact that this Court had expressly "decline[d] . . . to review" the Antidumping Act claims, 475 U.S. at ____ n. 3, 106 S.Ct. at 1352 n.3, and that the remand ordered by this Court did not involve those claims.

This Court carefully limited the scope of its ruling in *Matsushita*. The Court made it plain that petitioners' claims under the Antidumping Act — claims that include both *individual, non-conspiratorial* violations of that Act and conspiracy violations — were not before it. The issue before the Court was "the standard district courts must apply when deciding whether to grant summary judgment in an *antitrust conspiracy* case." 475 U.S. at ____, 106 S.Ct. at 1351 (emphasis added). The Court's analysis and formulation of the standard were explicitly and necessarily based upon the language of and policies underlying Section 1 of the Sherman Act.[8] As this Court has held, the legal standard to be applied in evaluating the sufficiency of the evidence offered in support of a claim is governed by the particular substantive law that underlies that claim. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. ____, ____, 106 S.Ct. 2505, 2510 (1986).

Notwithstanding this Court's express limitation of its decision to the standard to be applied to petitioners' Sherman Act claims, the Court of Appeals viewed that decision as "the law of the case" with respect to petitioners' claims under the Antidumping Act. The Third Circuit engaged in no analysis of

8. The Court held that "antitrust law limits the range of permissible inferences from ambiguous evidence" in a Sherman Act Section 1 case. 475 U.S. at ____, 106 S.Ct. at 1357.

the antidumping claims, concluding simply that the antitrust and antidumping claims were both controlled by this Court's Sherman Act analysis and by the instructions on remand.

This fundamental and inexplicable error cannot be attributed to this Court's decision.[9] Although the Third Circuit considered this Court's opinion to be "ambiguous" and "confusing," there can be no confusion concerning the scope of that opinion: this Court simply did not address the Antidumping Act claims. Moreover, the Court of Appeals also appears to have acted on the impression that — notwithstanding this Court's statement that it reviewed only the legal "standard" and not the "weight" of evidence, 475 U.S. at ____, 106 S.Ct. at 1351 — this Court had conducted a detailed factual review of the record to make a determination of the actual existence of respondents' motive to conspire in violation of Section 1 of the Sherman Act.[10] By so interpreting *Matsushita*, the Third Circuit misconstrued and exceeded the scope of this Court's mandate. This failure to comply with the Court's mandate is an error that must be corrected either upon an application for a writ of mandamus, or upon a new appeal. *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 256 (1895). When this Court issues its mandate, a Court of Appeals is not to "vary it, or examine it for any other purpose than execution, or give any other or further relief; or review it. . . ." Id.[11]

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9. Equally inexplicable is the Third Circuit's statement that it had entered a single judgment on the Antidumping Act and antitrust claims, 807 F.2d at 46, A-5, and that this Court's reversal and remand of that judgment required reconsideration of both types of claims. In fact, the Court of Appeals had entered two separate judgments, only one of which — the antitrust judgment — was reversed and remanded by this Court for further consideration. A-14 (antitrust judgment) and A-18 (antidumping judgment). *See also* A-22 to A-41 (excerpts of general docket of Court of Appeals).

10. Respondents, in fact, told this Court that the "clearcut legal questions" before this Court involved only the correct "legal standard" and that "the answers do not require this Court to make a *de novo* trip through the record." (Reply Brief for Petitioners, dated July 18, 1984, in No. 83-2004, at 1-2).

11. *See also United States v. Haley*, 371 U.S. 18, 20 (1962); *In re Potts*, 166 U.S. 263, 266 (1897); *Gaines v. Rugg*, 148 U.S. 228 (1893).

II. Sherman Act Standards Cannot be Applied to Claims Under the Antidumping Act of 1916.

The Third Circuit's error goes far beyond technical misapplication of this Court's mandate. As a result of its confusion concerning the scope of *Matsushita*, the Court of Appeals concluded that neither claims that individual firms had engaged in dumping nor claims that multiple firms had conspired to do so can be sustained unless the plaintiff can also prove a substantive violation of Section 1 of the Sherman Act by a below-cost pricing conspiracy. The Third Circuit's decision ignores the language of the Antidumping Act and the fundamental economic differences between predatory, below-cost pricing and dumping. Moreover, the Third Circuit's decision effectively eliminates the remedy Congress created, wholly apart from the Sherman Act, for domestic firms injured by unfair foreign competition.

A. The Antidumping Act of 1916 Addresses a Distinct Anticompetitive Practice.

The language of the Antidumping Act makes it explicit that it addresses a different wrong and provides a different remedy than does the Sherman Act. In the Antidumping Act, Congress prohibited foreign firms from selling products "within the United States at a price substantially less" than the "wholesale price of such articles . . . in the principal market of the country of their production," when such pricing practices are pursued "with the intent of destroying or injuring an industry in the United States." 15 U.S.C. § 72. Congress created this prohibition because it made the judgment that this form of competition by foreign firms is unfair to American competitors and has adverse consequences for American industry, labor and, in the long run, the consumer. Congress' purpose was to create a remedy specifically directed against a notorious international trade practice that is prohibited by the laws of virtually every industrialized

nation.[12]

Although the Antidumping Act prohibits dumping with the intent of monopolizing or restraining trade, it goes much further than the Sherman Act. It also prohibits dumping with the intent of destroying or injuring particular American industries or of preventing the establishment of an industry in this country. Individual acts of dumping violate the Act whether or not the foreign firm has monopoly power or has participated in a conspiracy to restrain trade. Further, the Antidumping Act does not require that a plaintiff establish an injury to competition or antitrust injury to itself.

The Antidumping Act, in contrast to the Sherman Act, is designed to afford a remedy to injured domestic manufacturers for what Congress determined to be unfair competition by foreign firms: the selling of products in the United States market at prices substantially below those charged in foreign markets.

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12. In Article VI of the General Agreement on Tariffs and Trade ("GATT"), the United States and many of our trading partners, including Japan, formalized their joint condemnation of dumping: "1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry." 62 Stat. 3682.

In 1916 when the first United States antidumping act was enacted, dumping had already been outlawed by a number of countries. *See* Report of the Federal Trade Commission, "Antidumping Legislation and Other Import Regulation in the United States and Foreign Countries," Senate Doc. No. 112, 73d Cong. 2d Sess. (January 11, 1934); U.S. Tariff Commission Report to the House Ways and Means Committee, "Dumping and Unfair Foreign Competition in the United States," dated October 4, 1919; and the Federal Trade Commission's "Supplemental Report on Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries" dated June 27, 1938.

B. The Economic Rationale for Dumping Is Radically Different From the Economic Rationale for Below-Cost Pricing.

The differences between the Antidumping Act and the Sherman Act reflect fundamental differences between the economics of dumping and of predatory, below-cost pricing. This Court's decision in *Matsushita* underscores the importance of a clear understanding of the economic rationale of the pricing activities at issue.

Under this Court's decision, predatory pricing under section 1 of the Sherman Act involves a conspiracy to price below cost in a particular market with the objective of destroying competition. Once competition has been destroyed, the conspirators will raise prices to reap monopoly profits. The ability to raise prices may be important because the conspirators are permitted thereby to recoup the losses they suffered by originally pricing below cost. Where the conspirators cannot reasonably expect to acquire the monopoly power needed to charge supracompetitive prices, their motive to conspire to engage in predatory pricing may be questioned. *See Matushita*, 475 U.S. at ____, 106 S. Ct. at 1357-60; *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. ____, ____, 107 S.Ct. 484, 495 n.17 (1986).

Dumping, in contrast, is by definition a *two market, two-price* strategy, whereby foreign manufactured goods are imported into the United States at prices substantially below the prices at which such goods are sold in foreign countries. The touchstone in analyzing a dumping claim is the relationship between the foreign manufacturer's prices in the United States and in its foreign home market. To engage in effective dumping, a foreign manufacturer need not price below its marginal costs and thus need not sustain losses in the sense discussed in this Court's opinion in *Matsushita*. As long as the foreign manufacturer is able to cover fixed, as well as marginal, costs in a protected home market, it can export its product indefinitely at a price equal to marginal cost. An equally efficient competitor in an export market — faced with the need to recover both fixed and marginal

costs — will be unable to withstand this foreign competition. This practice can continue long term and can produce consistent profits for the foreign manufacturer.

Indeed, economic analysis confirms that dumping can be a highly profitable activity. In industries in which large-scale production permits cost reduction by economies of scale, dumping represents a means of increasing production volume and reducing unit costs.[13] The resulting cost reductions support further dumping by making it possible for the firm that dumps *either* to lower its export prices without selling below its marginal cost and incurring out-of-pocket losses, *or* to maintain low export prices and increase profits as the economies of scale generate further cost savings. Dumping enables the foreign manufacturer to obtain the economies of operating at or near full capacity without sacrificing the monopoly profits available in its protected home market.[14] The manufacturer therefore will be willing to engage

---

13. The record is replete with evidence describing the economic rationale for dumping. Petitioners' economic expert, Dr. DePodwin, concluded that during the four-year period studied, between the Japanese and United States markets, respondents made overall profits of 5-10% without necessarily selling below marginal cost. The Nehmer Report likewise concluded that respondents achieved "an acceptable rate of return overall." (Report reproduced in the appendix in the prior appeal at No. 83-2004, Appendix Vol. 6 at 2257a).

14. *See* Viner, *Dumping: A Problem in International Trade* (Chicago 1923; reprinted in 1966), acknowledged by respondents as "*the book which is recognized as the classic work in the field.*" *See also*, 402 F.Supp. 251, 259 (E.D. Pa. 1975). Viner shows that "[t]he producer who resorts to dumping *always* does so with the aim of deriving a personal pecuniary advantage therefrom" (*Id.* at 29) and that in industries subject to economies of scale, the cost reductions made possible by dumping larger production volumes support continued dumping.

Viner states: "If a manufacturer can sell each year in his domestic market a part, but only a part, of his maximum possible output at higher prices than those ruling in outside markets, he may decide to maintain his domestic prices at this higher level and to seek f reign orders at reduced prices for the balance of his potential output in preference to reducing his domestic prices and in preference to operating only to part capacity. *By resorting to dumping he may obtain the economies of operation at full capacity without surrendering the profits to be derived from the sale of part of his output in the domestic market at prices above the foreign level.*" *Id.* at 27-28.

Viner also concludes that "[i]t is possible that a manufacturer may sell

in dumping whether or not it expects to acquire monopoly power in the United States.

Moreover, this type of dumping still makes economic sense when it is motivated by the "less ambitious" motive of weakening competitors in the market dumped on in order to cripple or discourage them from "contesting [the foreign producer's] prices or from extending their activities into his special markets,"[15] such as new products which may require new capital expenditure for plant or research and development.

All of the critical, structural economic conditions necessary for profitable, long-term dumping exist in this case:

> (i) A closed foreign home market in which prices were subject to respondents' collusive monopolistic control. *See Matsushita*, 475 U.S. at ___, 106 S.Ct. at 1361; 807 F.2d at 47, A-7.
>
> (ii) Rapid, continuous expansion of production volume in excess of demand in the foreign home market. 807 F.2d at 47, A-7.
>
> (iii) An industry subject to economies of scale. ("Joint Preliminary Pretrial Memorandum on Behalf of Certain Defendants" dated April 21, 1978, at 33).
>
> (iv) An industry in which fixed costs are an important part of total production costs. *Id.*[16]

NOTES *(Continued)*

abroad at reduced prices in order to increase his sales, without reduction of his domestic prices, *to such a rate that it will not only permit him to maintain full production from his existing plant facilities but will enable him to extend his plant so as to obtain the economies of larger-scale production*." *(Id. at 27-28)*.

15. Viner, *supra*, n. 14 at 122.

16. In addition, significant barriers to entry exist in the United States market by reason of high technology and capital requirements necessary for mass production so that weakening existing competitors is an effective strategy. For example, after studying this market in 1974, Philips, Europe's largest television manufacturer, rejected *de novo* entry in this market as "impractical" and "impossible" and determined instead in 1974 to purchase Magnavox, an American manufacturer — "the last attractive and practical vehicle through which to enter the United States home entertainment market." Philips concluded that "[t]o start from scratch is — as a practical matter — impossible." Deposition of

In the presence of these economic conditions, entering into a conspiracy to engage in dumping or unilaterally engaging in dumping was profitable, economically rational behavior for respondents. The substantially different economic motives underlying single market, below-cost pricing on one hand and dumping, a form of international price discrimination, on the other, make clear the nature of the Court of Appeals' error in extrapolating this Court's decision in *Matsushita* to the distinct dumping segment of this case.

C. The Third Circuit's Application of the Sherman Act Standards of *Matsushita* to Antidumping Act Claims Is Neither Legally Nor Logically Supportable.

In *Matsushita*, this Court concluded that a predatory pricing conspiracy would have required respondents to agree to accept losses, because only by pricing at a loss-producing level could respondents have violated the Sherman Act. This premise formed the principal basis for the Court's rejection of petitioners' antitrust claims, but it is simply inapplicable to dumping claims. Neither the language of the Antidumping Act nor the economic realities of dumping require below-cost pricing or out-of-pocket losses. There is nothing irrational in a conspiracy to injure United States competitors by pricing at low, but profitable, levels, *i.e.*, by dumping in the fashion the record in this case exemplifies.

Similarly, although under the Sherman Act a conspiracy to increase prices in a foreign market may not tend to show a conspiracy to price predatorily in the United States, *Matsushita*, 475 U.S. at ____, 106 S.Ct. at 1359-60, it does prove a necessary element of an Antidumping Act charge. The Antidumping Act by its terms *requires* examination of the pricing structure in a foreign market. A combination or conspiracy to set supra-competitive prices in a foreign market is highly probative in

North American Philips Corporation, Exhibit 53. One of its internal studies of *de novo* market entry concluded bluntly that "this is not an acceptable alternative with regard to the investment and time required." Deposition of North American Philips, Exhibit 119 at 6, App. Vol. 11 at 4266a.

showing an Antidumping Act conspiracy. Indeed, "monopolistic control of the home market is perhaps the most important prerequisite to the existence of dumping . . . ." Viner, *Dumping: A Problem in International Trade*, at 376. In contrast to the Sherman Act analysis in *Matsushita*, in an Antidumping Act case the court can and must draw inferences of illegal dumping from evidence of a supra-competitive pricing structure in a foreign market. The scheme cannot be dismembered.

The Court of Appeals' error is starkest in its wholesale application of Sherman Act conspiracy standards to *individual* Antidumping Act claims. Section 1 of the Sherman Act prohibits only conspiratorial or concerted action; a single defendant, acting alone, cannot violate Section 1. This is not the case under the Antidumping Act. If petitioners can show an individual foreign competitor's intent to injure an industry in the United States, given the economic rationality of dumping, such a showing is sufficient to prove a claim under the Antidumping Act, whether or not a conspiracy is shown.

Petitioners presented evidence on all essential elements of their claims in opposition to respondents' summary judgment motions. It is undisputed that respondents intentionally set their American prices at levels far below their Japanese prices — the Department of Treasury found this to be a fact, and petitioners' model-by-model price comparison independently established this point. It is plain that respondents engaged in elaborate activities to conceal their actual United States prices at dumping levels paying extra *ad valorem* duties and risking forfeiture and criminal prosecution to do so. It is also undisputed that this price discrimination injured American industry — the Tariff Commission reached this conclusion, and respondents conceded this fact before this Court. All petitioners' damage proofs adduced in pretrial proceedings had been conceded for the purpose of respondents' summary judgment motions. Finally, it cannot be disputed that this injury was a natural and foreseeable, intended consequence of respondents' pricing activities. Therefore, entirely apart from the direct evidence of respondents' conspiracy to charge high prices in Japan, 475 U.S. at ____, 106 S.Ct. 1361, individual acts of dumping have been shown.

The Third Circuit ignored this evidence because of its fundamental misreading of *Matsushita*. That misreading resulted in the blind application of *Matsushita* to claims asserted under a statute that prohibits conduct that is motivated by a different economic rationale from that involved in single-market predatory pricing. This decision should not be allowed to stand.

III. The Third Circuit's Error Has Serious and Far-Reaching Adverse Implications for American Industry and Labor.

The Court of Appeals' decision leaves United States industry without the remedy Congress created to protect it from this unfair competitive practice. The practice affects not only members of the targeted industries but also their employees and ancillary supply industries. Total employment in the United States consumer electronics industry declined by almost one-third between 1968 and 1977. In the United States television industry, major reductions in employment related to television production occurred during this same period. The International Trade Commission estimated that the average number of persons (production and related workers) employed in television manufacturing declined by 14,000, or more than 36 percent, between 1968 and 1977, with the bulk of this decline occurring after 1973. Reduced employment in the consumer electronics industry, especially in television production, also affects employment in other, related industries.[17]

The impact of dumping on domestic employment in the television industry continues to be devastating. A January 1986 study published by the United States Department of Commerce on the direct and indirect impact of foreign trade on employment pointed out that the $123 billion trade deficit in 1984 meant that

17. Nehmer Report, App. Vol. 6 at 2503a. For every 1,000 jobs in plants producing television receivers there are approximately 2,150 jobs in supplying plants and other industry groups. The largest of these supplying plants are those which produce electronic components, wood products and furniture, glass, and fabricated metals, as well as wholesale and retail trade. Thus, when total employment in television manufacturing firms fell from 52,000 to 39,900 from 1973 to 1975, or a net loss of more than 12,000 jobs, the actual total loss was closer to 38,000 jobs. *Id.* at 2503a-4a.

employment was between 1.3 percent and 2.7 percent lower than it would have been if trade were balanced — a loss of between 1.1 and 2.4 million jobs in 1984. Employment losses from trade in electrical and electronic equipment in 1985 were the second highest — next to textile mill products — of any domestic manufacturing industry. U.S. Trade-Related Employment: 1978-84 (U.S.I.T.C. Publication 1855, May 1986), as updated in AFL-CIO Reviews the Issues: Report No. 10, December 1986, p. 3, Table 2.

The questions presented by the lower court's unusual action on remand are thus of vital importance. Their significance extends far beyond the American consumer electronics industry and its employees. Indeed, seldom in the seventy years since the Antidumping Act was enacted have the protections provided by that statute been of greater importance than they are today. A massive trade deficit, high unemployment, and the decline of basic industries in this country have placed the concerns addressed by the Act at the forefront of current foreign policy discussions. If, contrary to Congress' express intent, the Third Circuit's application of the Antidumping Act is permitted to stand, large segments of American industry and labor will be deprived of the only remedy available to compensate for the injurious effects of unfair foreign competition. The Court of Appeals' decision eliminating the remedy provided by the Act should not be allowed to stand.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari or in the alternative of mandamus should be granted.

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-2080, 81-2331/2332/2333

In re:
JAPANESE ELECTRONIC PRODUCTS ANTITRUST LITIGATION

ZENITH RADIO CORPORATION
and
NATIONAL UNION ELECTRIC CORPORATION,
Appellants

(D.C. MDL NO. 0000189)

ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES

Submitted Under Third Circuit Rule 12(6)
October 31, 1986
Before: SEITZ, GIBBONS, and MESKILL*, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel October 21 and 22, 1982. By opinion and judgment filed December 5, 1983, this Court affirmed in part and reversed in part the judgment of the said District Court and remanded the causes for further proceedings.

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* Hon. Thomas J. Meskill, U.S. Circuit Judge for the Second Circuit, sitting by designation.

723 F.2d 238, 723 F.2d 319 (3rd Cir. 1983). The Supreme Court by order dated April 1, 1985, allowed certiorari and subsequently reversed the judgment of this Court and remanded the cause for further proceedings in conformity with its opinion. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, U.S. , 106 S. Ct. 1348 (1986).

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court granting summary judgment on the antidumping claims in favor of all defendants, entered April 14, 1980, as amended by the orders entered April 23 and 25, 1980, be, and the same are hereby affirmed in all respects.

Costs taxed against the appellants to the extent they have not previously been taxed.

ATTEST;
SALLY MRVOS
Clerk

December 12, 1986

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-2080, 81-2331/2332/2333

In re:
JAPANESE ELECTRONIC PRODUCTS
ANTITRUST LITGATION

ZENITH RADIO CORPORATION
and
NATIONAL UNION ELECTRIC CORPORATION,
Appellants

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ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

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OPINION OF THE COURT

GIBBONS, *Circuit Judge:*

This matter is before us on remand from the Supreme Court. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, ____U.S. ____, 106 S. Ct. 1348 (1986). The plaintiffs, American manufacturers of consumer electronic products, sued Japanese manufacturers of such products, alleging antitrust and antidumping violations of American law. The district court granted summary judgment in favor of all defendants on all claims. *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 494 F. Supp. 1190 (E.D. Pa. 1980) (granting summary judgment on the 1916 Antidumping Act claims), 513 F. Supp. 1100 (E.D. Pa. 1981) (granting summary judgment on the conspiracy claims). Exercising the plenary review appropriate for summary judgment cases, this court in two separate opinions affirmed in part and reversed in part. *In re Japanese Electronic Products*, 723 F.2d 238, 723 F.2d 319 (3d Cir. 1983). The defendants in whose favor summary judgments were not affirmed petitioned for certiorari. The Supreme Court granted certiorari on the antitrust segment of the case, which involved claims under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2 (1982). The Supreme Court judgment, dated March 26, 1986, provides;

> **THIS CAUSE** came on to be heard on the transcript of the record from the [United States Court of Appeals for the Third Circuit] and was argued by counsel.
>
> **ON CONSIDERATION WHEREOF,** it is ordered and adjudged by the Court that the judgment of the above court in this cause is reversed with costs, and that this cause is remanded to the United States Court of Appeals for the Third Circuit for further proceedings in conformity with the opinion of this Court.

Although we dealt with the Sherman Act claims and the claims under the Antidumping Act of 1916, 15 U.S.C. §72 (1982), in two separate opinions, this court entered a single judgment. This

judgment has now been reversed and remanded by the Supreme Court, with a direction that "this cause" be remanded for further proceedings in conformity with its opinion. Thus it appears that we are directed to reconsider not only the Sherman Act claims, but the entire case. Complicating the picture further, the opinion of the Supreme Court provides;

> On remand, the Court of Appeals is free to consider whether there is other evidence that is sufficiently unambiguous to permit a trier of fact to find that petitioners conspired to price predatorily for two decades despite the absence of any apparent motive to do so.

106 S. Ct. at 1362. This language also appears to suggest that we must reconsider the Antidumping Act claims on which the Supreme Court did not grant certiorari, as well as the Sherman Act claims which it did review. We find this suggestion to be somewhat confusing since the Supreme Court had the very same summary judgment record before it that this court had considered, and does exercise the same plenary review of the propriety of the district court summary judgment.

Faced with a seemingly ambiguous direction, this court directed the parties to file briefs addressing: a) the appropriate disposition of the case in light of the Supreme Court direction on remand; b) whether the law with respect to permissible inferences of concert of action announced by the Court for Sherman Act claims applies to concert of action issues arising under other statutes, such as the Antidumping Act of 1916; and c) what disposition should be made of the Antidumping Act claims if these inferences do apply. We now conclude: (1) that the Supreme Court's direction that this court may consider "other evidence" means that other evidence already in the summary judgment record may be considered; (2) that there is no evidence in the record supporting an inference of a predatory pricing conspiracy among the defendants in the American market other than that which the Supreme Court has already held to be legally insufficient; and (3) that the Supreme Court's holding that there is

insufficient evidence of a conspiracy to price predatorily in the American market requires the affirmance of the summary judgment on the Antidumping Act claim.

The conspiracy on which the plaintiffs rely in support of their Sherman Act claims is a horizontal conspiracy among Japanese manufacturers of consumer electronic products to maintain artificially high prices in the Japanese home market to help support sales at low prices in the American export market, thereby injuring American manufacturers competing with them in the latter market. When this court first reviewed the summary judgment record, we concluded it permitted findings that there are high entry barriers in the Japanese home market; that the Japanese manufacturers have higher fixed costs and higher debt-equity ratios than their American counterparts; that the Japanese manufacturers, individually and in the aggregate, created higher plant capacities than could reasonably be absorbed by the Japanese home market, thereby creating an incentive to dispose of the excess capacity in a market outside Japan. 723 F.2d at 238. We also concluded that there is direct and circumstantial evidence of an agreement to stabilize Japanese home market prices to realize the profits needed to support sales at low prices in the United States. *Id.* at 309. Despite these conclusions, the Supreme Court conclusively held that the defendants "had no motive to enter into the alleged conspiracy." 106 S. Ct. at 1360. In addition, this court previously referred to evidence that the defendants' export sales generally were at prices which produced losses, often as high as twenty-five percent on sales. 723 F.2d at 311. We also noted that the five-company rule permitted an inference that allocation of customers in the United States, combined with price fixing in Japan, was intended to concentrate the effects of dumping upon American competitors while eliminating competition among the Japanese manufacturers in either market. *Id.* The Supreme Court, however, conclusively held that "in light of the absence of any rational motive to conspire, neither [defendants'] pricing practices, nor their conduct in the Japanese market, nor their agreements respecting prices and distribution in the American market, suffice to create a 'genuine issue for trial.' " 106 U.S. at 1362. These holdings are the law of the case

and are binding on this court. Consequently, the plaintiffs are now foreclosed from arguing that there was a motive to enter into the alleged conspiracy. They are also foreclosed from arguing that the direct and circumstantial evidence to which this court referred in its prior opinion is sufficient to overcome a motion for summary judgment. What is left open by the Supreme Court's remand, therefore, can only be a consideration of evidence other than pricing practices in the American market, conduct in the Japanese market, and agreements respecting customer allocation in the American market. Such evidence, moreover, must suffice to overcome the law of the case that there was no motive to conspire.

Plaintiffs' brief on remand essentially argues that the Supreme Court misunderstood their case when it assumed that their conspiracy theory was an alleged agreement to sell in the United States below cost — a conspiracy the Supreme Court deemed economically senseless. Instead, plaintiffs now contend that the conspiracy was one to sell in the American market at below the competitive market price, but above marginal cost. Manufacturers with excess capacity and high fixed costs, plaintiffs contend, have a rational motive to enter into such a conspiracy. This argument, however, is foreclosed because the Supreme Court has already addressed it. Explaining its use of the term predatory pricing, the Court observed:

> Throughout this opinion, we refer to the asserted conspiracy as one to price "predatorily." This term has been used chiefly in cases in which a single firm, having a dominant share of the relevant market, cuts its prices in order to force competitors out of the market, or perhaps to deter potential entrants from coming in. . . . In such cases, "predatory pricing" means pricing below some appropriate measure of cost.
>
> There is a good deal of debate, both in the cases and in the law reviews, about what "cost" is relevant in such cases. We need to resolve this debate here, because . . . this is a Sherman Act §1 case. For purposes of this case, it is enough

> to note that respondents have not suffered an antitrust injury unless petitioners conspired to drive respondents out of the relevant markets by (i) pricing below the level necessary to sell their products, or (ii) pricing below some appropriate measure of cost. An agreement without these features would either leave respondents in the same position as would market forces or would actually benefit respondents by raising market prices. Respondents therefore may not complain of conspiracies that, for example, set maximum prices above market levels, or that set minimum prices at *any* level.

106 S. Ct. at 1355 n.8 (citations omitted). It is clear, therefore, that the Supreme Court understood the conspiracy theory to be one to price predatorily; that is, at a level which would injure the plaintiffs. Thus this court is not free to reject the Supreme Court's holding that there was no motive to conspire to fix low prices in the American market. Moreover, this court is not free to disregard the law of the case that "[e]vidence that tends to support any of [the] collateral conspiracies thus say little, if anything, about the existence of a conspiracy to charge *below market prices* in the American market over a period of two decades." 106 S. Ct. at 1361 (emphasis added).

Plaintiffs further argue that because the Supreme Court did not review their Antidumping Act claim, the Court failed to appreciate the full significance of the defendants' conduct in the Japanese market. They point to evidence tending to suggest a horizontal conspiracy to maintain supracompetitive prices in Japan, a market where the defendants are protected from competition by high entry barriers. The profits derived conspiratorily in the Japanese market, plaintiffs urge, permitted sales in the United States at dumping prices. However this court again is foreclosed by the Supreme Court's opinion. The Supreme Court stated flatly that "[e]vidence that petitioners conspired to raise prices in Japan provides little, if any, support for respondents' claims: a conspiracy to increase profits in one market does not tend to show a conspiracy to sustain losses in another." 106 S. Ct.

at 1361. The Court held, moreover, that defendants pricing practices did not suffice to create a genuine issue for trial. *Id.* at 1362. This reference plainly was to prices charged in the American market. The Supreme Court obviously was aware that these prices could be found to have been dumping prices.

Plaintiffs only real effort to refer to "other evidence" is to two expert reports, not previously considered, tending to explain why the defendants would have had a plausible motive to engage in the alleged conspiracy. These reports consist not of new evidentiary materials, but of explanations based upon the existing record. They amount to no more than an argument that the Supreme Court majority erred in its conclusion that no factfinder could draw an inference of conspiracy to price predatorily. We are not free to accept such an argument at this stage of the case, even from an expert. To the extent that the expert opinions might in themselves be considered evidentiary, they cannot be considered "other evidence" within the meaning of the Supreme Court's mandate. The case was not remanded to give the plaintiffs an opportunity to create a new summary judgment record.

We conclude, therefore, that there is no evidence other than that upon which we previously relied when we concluded that there were material fact issues regarding the existence of a predatory pricing conspiracy in the American market. The Supreme Court has already held this evidence is legally insufficient. Therefore the summary judgment on the Sherman Act claims must be affirmed.[1]

Since it is now the law of the case that there is insufficient evidence of a conspiracy to price predatorily in the American market, it is necessary to reconsider our disposition of the Antidumping Act claim. As we explained in our earlier opinion, the Antidumping Act of 1916 includes as a substantive element in the cause of action a proviso that the acts complained of "be done with the intent of destroying or injuring an industry in the United States." 15 U.S.C. §72 (1982). *In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 319, 322 (3d Cir. 1983). The plaintiffs assert that the Japanese manufacturers individually and collectively have engaged in illegal dumping. With respect

to the conspiracy claims, we earlier held "that the evidence supporting plaintiffs' theory that defendants entered into the alleged conspiracy also creates a genuine issue of fact as to whether defendants agreed to dump [consumer electronic products] on the United States market with the specific intent to destroy or injure an industry in the United States." *Id.* at 328. Since the Sherman Act conspiracy charge failed in the Supreme Court, our holding on the Antidumping Act conspiracy claim must fail with it. The Antidumping Act claims against individual Japanese manufacturers are equally vulnerable because we relied, in reversing summary judgment on those claims, on the evidence tending to show that the individual manufacturers joined in a conspiracy to sell in the American market at predatory prices. 723 F.2d at 329. There is no other evidence tending to show that any of the defendants still in the case dumped consumer electronic products with the required intent to injure or to destroy a United States industry.

The summary judgment in favor of each defendant will therefore be affirmed in all respects.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 80-2080, 81-2331, 81-2332 and 81-2333

In Re:
JAPANESE ELECTRONIC PRODUCTS ANTITRUST LITIGATION

ZENITH RADIO CORPORATION
and
NATIONAL UNION ELECTRIC CORPORATION,
Appellants

(D. C. MDL No. 0000189)

Present: SEITZ, GIBBONS and MESKILL, *Circuit Judges*

The court having considered the judgment of the United States Supreme Court in the above entitled matter, it is ORDERED:

(1) that the appellants Zenith Radio Corporation and National Union Electric Corporation shall within thirty (30) days of the date hereof file with this court a brief not exceeding fifty (50) pages addressing

(a) the appropriate disposition of the Sherman Act claims in light of the Supreme Court's direction on remand,

(b) whether the law with respect to permissible inferences of concert of action announced by that Court for Sherman Act claims applies to concert of action issues arising under other statutes such as the Antidumping Act of 1916, and if so what disposition should be made of the Antidumping Act claims;

(2) that the appellees shall within thirty (30) days of the filing of appellants' brief file a responding brief, not exceeding fifty (50) pages;

(3) that appellants may file a reply brief, not exceeding twenty (20) pages, within fifteen (15) days of the filing of appellees' responding brief.

For the Court,
JOHN GIBBONS
Judge

Dated: April 30, 1986

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2331

In Re:

JAPANESE ELECTRONIC PRODUCTS
ANTITRUST LITIGATION

(D. C. MDL No. 189)

ZENITH RADIO CORPORATION,

Appellant

v.

MATSUSHITA ELECTRIC INDUSTRIAL
CO., LTD., et al.

(D. C. Civ. No. 74-2451)

No. 81-2332

In Re:

JAPANESE ELECTRONIC PRODUCTS
ANTITRUST LITIGATION

(D. C. MDL No. 189)

NATIONAL UNION ELECTRIC CORPORATION,

Appellant

v.

MATSUSHITA ELECTRIC INDUSTRIAL
CO., LTD., et al.

(D. C. Civ. No. 74-3247)

No. 81-2333

In Re:

JAPANESE ELECTRONIC PRODUCTS ANTITRUST LITIGATION

(D. C. MDL No. 189)

ZENITH RADIO CORPORATION

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., et al.

(D. C. Civ. No. 74-2451)

NATIONAL UNION ELECTRIC CORPORATION

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., et al.

(D. C. Civ. No. 74-3247)

MITSUBISHI ELECTRIC CORPORATION ("MELCO")
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: SEITZ, *Chief Judge* and GIBBONS and MESKILL*, *Circuit Judges*

---

* Honorable Thomas J. Meskill, United States Circuit Judge for the Second Circuit, sitting by designation.

JUDGMENT

1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.

2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered March 21, 1975, granting defendants' motions to dismiss Count V of the National Union Electric Corporation (NUE) complaint (D.C. Civ. No. 74-3247) and Count IV of the Zenith complaint (D.C. Civil No. 74-2451), be and the same is hereby affirmed.

3. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered April 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of the Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck & Co., on the NUE and Zenith claims under sections 1 and 2 of the Sherman Act, under the Wilson Tariff Act and under Section 7 of the Clayton Act, be and the same is hereby affirmed.

4. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered April 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of these other defendants:

Hitachi Kaden Hanbai Kabushiki Kaisha (Hitachi Sales Corp. of Japan)	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi, Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi Sales Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Industrial Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
Matsushita Electronics Corp.	D.C. Civ. No. 74-2451

Melco Sales, Inc.	D.C. Civ. No. 74-2451
Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
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Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

5. Costs to be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, per paragraph (3) of this judgment. Costs to be taxed in favor of NUE and Zenith against the other twenty defendants enumerated in paragraph (4) of this judgment Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a).

ATTEST:
Clerk

December 5, 1983

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 80-2080

In Re:
JAPANESE ELECTRONIC
PRODUCTS ANTITRUST LITIGATION

ZENITH RADIO CORPORATION AND
NATIONAL UNION ELECTRIC CORPORATION,
Appellants

(D.C. MDL No. 189)

No. 81-2331

In Re:
JAPANESE ELECTRONIC PRODUCTS
ANTITRUST LITIGATION
(D.C. MDL No. 189)
ZENITH RADIO CORPORATION,
Appellant

v.

MATSUSHITA ELECTRIC INDUSTRIAL
Co., Ltd., et al.
(D.C. Civ. No. 74-2451)

No. 81-2332

In Re:
JAPANESE ELECTRONIC PRODUCTS
ANTITRUST LITIGATION
(D. C. MDL No. 189)

NATIONAL UNION ELECTRIC CORPORATION,
Appellant

v.

MATSUSHITA ELECTRIC INDUSTRIAL
Co., Ltd., et al.
(D.C. Civ. No. 74-3247)

No. 81-2333

In Re:
JAPANESE ELECTRONIC PRODUCTS
ANTITRUST LITIGATION
(D.C. MDL. No. 189)
ZENTH RADIO CORPORATION

v.

MATSUSHITA ELECTRIC INDUSTRIAL
CO., LTD., et al.
(D.C. Civ. No. 74-2451)
NATIONAL UNION ELECTRIC CORPORATION

v.

MATSUSHITA ELECTRIC INDUSTRIAL
CO., LTD., et al.
(D.C. Civ. No. 74-3247)
MITSUBISHI ELECTRIC CORPORATION ("MELCO"),
Appellant

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Present: SEITZ, *Chief Judge* and GIBBONS and MESKILL*,
Circuit Judges

*Honorable Thomas J. Meskill, United States Circuit Judge for the Second Circuit, sitting by designation.

JUDGMENT

1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.

2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered April 14, 1980, as amended by orders entered April 23 and 25, 1980, be and the same is hereby affirmed insofar as it dismissed the National Union Electric Corporation (NUE) and Zenith claims under the Antidumping Act of 1916, 15 U.S.C. §72 (1976) against the Sony Corp., Sony Corp. of America, Sears, Roebuck & Co., and Motorola, Inc..

3. It is further ordered and adjudged that the order of the said District Court entered April 14, 1980, as amended by orders entered April 23 and 25, 1980, insofar as it dismissed the NUE and Zenith dumping claims against these other defendants:

Hitachi Kaden Hanbai Kabushiki Kaisha (Hitachi Sales Corp. of Japan)	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi, Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
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Matsushita Electric Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Industrial Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
Matsushita Electronics Corp.	D.C. Civ. No. 74-2451
Melco Sales, Inc.	D.C. Civ. No. 74-2451
Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247

Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Quasar Electronics Corp.	D.C. Civ. No. 74-2451
Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

4. Costs will be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, and against the other twenty defendants enumerated in paragraph (3) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a).

ATTEST:
Clerk

December 5, 1983

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 80-2080

APPEAL FROM EASTERN DISTRICT OF PENNSYLVANIA

In Re:
JAPANESE ELECTRONIC PRODUCTS ANTITRUST LITIGATION

ZENITH RADIO CORPORATION
AND
NATIONAL UNION ELECTRIC CORPORATION,
Appellants

No. Below: 723 F2d 319 (83) (D.C. No. 00189 MDL)
Judge Below: Edward R. Becker
Date of Judgment:
Notice of appeal filed: May 7, 1980; petition for leave to Commenced in D.C. November 29, 1974 file appeal.

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80-2080

* * *

1983 Dec. 5 Opinion of the Court (*Seitz*, Ch. J. Gibbons and Meskill, C.J.), filed (Covers 80-2080 & 81-2331/3)

Dec. 5 Judgment:

1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.

2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered April 14, 1980 as amended by orders

entered April 23 and 25, 1980, be and the same is hereby affirmed insofar as it dismissed the National Union Electric Corporation (NUE) and Zenith claims under the Antidumping Act of 1916, 15 U.S.C. §72 (1976) against the Sony Corp., Sony Corp. of America, Sears, Roebuck & Co., and Motorola, Inc.

3. It is further ordered and adjudged that the order of the said District Court entered April 14, 1980, as amended by orders entered April 23 and 25, 1980, insofar as it dismissed the NUE and Zenith dumping claims against these other defendants:

Hitachi Kaden Hanbai Kabushiki Kaisha (Hitachi Sales Corp. of Japan)	D.C. Civ. Nos. 74-2451; 74-3247
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Hitachi Sales Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Industrial Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
Matsushita Electronics Corp.	D.C. Civ. No. 74-2451
Melco Sales, Inc.	D.C. Civ. No. 74-2451
Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Quasar Electronics Corp.	D.C. Civ. No. 74-2451
Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247

Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

4. Costs will be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, and against the other twenty defendants enumerated in paragraph (3) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 80-2080, 81-2331/3)

Dec. 5 Opinion of the Court (Seitz, Ch. J. *Gibbons* and Meskill, C.J.), filed (Covers 81-2331/3)

Dec. 5 Judgment:

> 1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.
>
> 2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered March 21, 1975, granting defendants' motions to dismiss Count V of the National Union Electric Corporation (NUE) complaint (D.C. Civ. No. 74-3247) and Count IV of the Zenith complaint (D.C. Civil No. 74-2451), be and the same is hereby affirmed.

3. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered April 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of the Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck & Co., on the NUE and Zenith claims under sections 1 and 2 of the Sherman Act, under the Wilson Tariff Act and under Section 7 of the Clayton Act, be and the same is hereby affirmed.

4. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered April 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of these other defendants:

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Hitachi, Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi Sales Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Industrial Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
Matsushita Electronics Corp.	D.C. Civ. No. 74-2451
Melco Sales, Inc.	D.C. Civ. No. 74-2451
Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Quasar Electronics Corp.	D.C. Civ. No. 74-2451

Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

5. Costs to be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, per paragraph (3) of this judgment. Costs to be taxed in favor of NUE and Zenith against the other twenty defendants enumerated in paragraph (4) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 81-2331/3)

* * *

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2331

APPEAL FROM EASTERN DISTRICT OF PENNSYLVANIA

In Re:
JAPANESE ELECTRONIC PRODUCTS ANTITRUST LITIGATION
(D.C. MDL No. 189)

ZENITH RADIO CORPORATION

Appellant

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL.
(D.C. Civ. No. 74-2451)

No. Below: 723 F2d 319 (83), 723 F2d 238 (83), D.C. MDL No. 189; D.C. Civil No. 74-2451
Judge Below: Edward R. Becker
Date of Judgment:
Notice of appeal filed: May 27, 1981; Commenced in D.C. 11/29/74-MDL No. 189;

* * *

1983 Dec. 5 Opinion of the Court (*Seitz*, Ch. J. Gibbons and Meskill, C.J.), filed (Covers 80-2080 & 81-2331/3)

Dec. 5 Judgment:

1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.

2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered April 14, 1980, as amended by orders

entered April 23 and 25, 1980, be and the same is hereby affirmed insofar as it dismissed the National Union Electric Corporation (NUE) and Zenith claims under the Antidumping Act of 1916, 15 U.S.C. §72 (1976) against the Sony Corp., Sony Corp. of America, Sears, Roebuck & Co., and Motorola, Inc.

3. It is further ordered and adjudged that the order of the said District Court entered April 14, 1980, as amended by orders entered April 23 and 25, 1980, insofar as it dismissed the NUE and Zenith dumping claims against these other defendants:

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Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
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Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
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be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

4. Costs to be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, and against the other twenty defendants enumerated in paragraph (3) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 80-2080, 81-2331/3)

Dec. 5 Opinion of the Court (Seitz, Ch. J. *Gibbons* and Meskill, C.J.) filed (Covers 81-2331/3)

Dec. 5 Judgment:

> 1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.
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> 2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered March 21, 1975, granting defendants' motions to dismiss Count V of the National Union Electric Corporation (NUE) complaint (D.C. Civ. No. 74-3247) and Count IV of the Zenith complaint (D.C. Civil No. 74-2451), be and the same is hereby affirmed.

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Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
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Melco Sales, Inc.	D.C. Civ. No. 74-2451
Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Quasar Electronics Corp.	D.C. Civ. No. 74-2451

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Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
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Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

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5. Costs to be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, per paragraph (3) of this judgment. Costs to be taxed in favor of NUE and Zenith against the other twenty defendants enumerated in paragraph (4) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 81-2331/3)

* * *

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2332

APPEAL FROM EASTERN DISTRICT OF PENNSYLVANIA

In Re:
JAPANESE ELECTRONIC PRODUCTS ANTITRUST LITIGATION
(D.C. MDL No. 189)

NATIONAL UNION ELECTRIC CORPORATION,
Appellant

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL.
(D.C. Civ. No. 74-3247)

No. Below: 723 F2d 319 (83), 723 F2d 238 (83),
D. C. MDL No. 189; D.C. Civil No. 74-3247
Judge Below: Edward R. Becker
Date of Judgment:
Notice of appeal filed: 5/27/81; Commenced in D.C. 11/19/74-MDL 189;

* * *

1983 Dec. 5 Opinion of the Court (*Seitz*, Ch. J. Gibbons and Meskill, C.J.), filed (Covers 80-2080 & 81-2331/3)

Dec. 5 Judgment:

1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.

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Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. No. 74-2451; 74-3247

Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

4. Costs will be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, and against the other twenty defendants enumerated in paragraph (3) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 80-2080, 81-2331/3)

Dec. 5 Opinion of the Court (Seitz, Ch. J. *Gibbons* and Meskill, C.J.), filed (Covers 81-2331/3)

Dec. 5 Judgment:

> 1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.
>
> 2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered March 21, 1975, granting defendants' motions to dismiss Count V of the National Union Electric Corporation (NUE) complaint (D.C. Civ. No. 74-3247) and Count IV of the Zenith complaint (D.C. Civil No. 74-2451), be and the same is hereby affirmed.

3. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered Apil 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of the Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck & Co., on the NUE and Zenith claims under sections 1 and 2 of the Sherman Act, under the Wilson Tariff Act and under Section 7 of the Clayton Act, be and the same is hereby affirmed.

4. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered April 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of these other defendants:

Hitachi Kaden Hanbai Kabushiki Kaisha (Hitachi Sales Corp. of Japan)	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi, Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi Sales Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electirc Industrial Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
Matsushita Electronics Corp.	D.C. Civ. No. 74-2451
Melco Sales, Inc.	D.C. Civ. No. 74-2451
Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Quasar Electronics Corp.	D.C. Civ. No. 74-2451

Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

5. Costs to be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, per paragraph (3) of this judgment. Costs to be taxed in favor of NUE and Zenith against the other twenty defendants enumerated in paragraph (4) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 81-2331/3)

* * *

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2333

APPEAL FROM EASTERN DISTRICT OF PENNSYLVANIA

In Re:
JAPANESE ELECTRONIC PRODUCTS ANTITRUST LITIGATION
(D.C. MDL No. 189)

ZENITH RADIO CORPORATION

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL.
(D.C. Civ. No. 74-2451)

NATIONAL UNION ELECTRIC CORPORATION,
Appellants

v.

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL.
(D.C. Civ. No. 74-3247)

MITSUBISHI ELECTRIC CORPORATION
("MELCO"),
Appellant

No. Below: 723 F2d 319 (83), 723 F2d 238 (83),
D.C. MDL No. 189; D.C. Civ. Nos. 74-2451 & 74-3247
Judge Below: Edward R. Becker
Date of Judgment:
Notice of appeal filed: 5/8/81; Commenced in D.C. 11/29/74-MDL No. 189;

* * *

1983 Dec. 5 Opinion of the Court (*Seitz*, Ch. J. Gibbons and Meskill, C.J.), filed (Covers 80-2080 & 81-2331/3)
Dec. 5 Judgment:

1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.

2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered April 14, 1980, as amended by orders entered April 23 and 25, 1980, be and the same is hereby affirmed insofar as it dismissed the National Union Electric Corporation (NUE) and Zenith claims under the Antidumping Act of 1916, 15 U.S.C. §72 (1976) against the Sony Corp., Sony Corp. of America, Sears, Roebuck & Co., and Motorola, Inc.

3. It is further ordered and adjudged that the order of the said District Court entered April 14, 1980, as amended by orders entered April 23 and 25, 1980, insofar as it dismissed the NUE and Zenith dumping claims against these other defendants:

Hitachi Kaden Hanbai Kabushiki Kaisha (Hitachi Sales Corp. of Japan)	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi, Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi Sales Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Industrial Co., Ltd.	D.C. Civ. No. 74-2451; 74-3247
Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
Matsushita Electronics Corp.	D.C. Civ. No. 74-2451
Melco Sales, Inc.	D.C. Civ. Nos. 74-2451
Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247

Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Quasar Electronics Corp.	D.C. Civ. No. 74-2451
Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

4. Costs will be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, and against the other twenty defendants enumerated in paragraph (3) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 80-2080, 81-2331/3)

Dec. 5 Opinion of the Court (Seitz, Ch. J. *Gibbons* and Meskill, C.J.), filed (Covers 81-2331/3)

Dec. 5 Judgment:

1. These causes came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and were argued by counsel on October 21 and 22, 1982.

2. On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, entered March 21, 1975, granting defendants' motions to dismiss Count V of the National Union Electric Corporation (NUE) complaint (D.C. Civ. No. 74-3247) and Count IV of the Zenith complaint (D.C. Civil No. 74-2451), be and the same is hereby affirmed.

3. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered April 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of the Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck & Co., on the NUE and Zenith claims under sections 1 and 2 of the Sherman Act, under the Wilson Tariff Act and under Section 7 of the Clayton Act, be and the same is hereby affirmed.

4. It is further ordered and adjudged that the order of the said District Court entered March 27, 1981, as amended by orders entered April 9, 1981 and May 14, 1981, insofar as it granted summary judgment in favor of these other defendants:

Hitachi Kaden Hanbai Kabushiki Kaisha (Hitachi Sales Corp. of Japan)	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi, Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Hitachi Sales Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Corp. of America	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Industrial Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Matsushita Electric Trading Co., Ltd.	D.C. Civ. No. 74-2451
Matsushita Electronics Corp.	D.C. Civ. No. 74-2451
Melco Sales, Inc.	D.C. Civ. No. 74-2451

Mitsubishi Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi Electric Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Mitsubishi International Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Quasar Electronics Corp.	D.C. Civ. No. 74-2451
Sanyo Electric, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Electric Trading Co., Ltd.	D.C. Civ. Nos. 74-2451; 74-3247
Sanyo Manufacturing Corp.	D.C. Civ. No. 74-2451
Sharp Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Sharp Electronics Corp.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba America, Inc.	D.C. Civ. Nos. 74-2451; 74-3247
Toshiba Corp. (formerly Tokyo Shibaura Electric Co., Ltd.)	D.C. Civ. Nos. 74-2451; 74-3247

be, and the same is hereby reversed and the causes remanded to the said District Court for further proceedings consistent with the opinion of this Court.

5. Costs to be taxed in favor of Sony Corp., Sony Corp. of America, Motorola, Inc., and Sears, Roebuck and Company, against NUE and Zenith, per paragraph (3) of this judgment. Costs to be taxed in favor of NUE and Zenith against the other twenty defendants enumerated in paragraph (4) of this judgment. Each party in these appeals is directed to furnish the Clerk of this Court, within ten (10) days of the entry of judgment, a brief written statement of its views as to the allocation of costs among the parties. *See* Fed. R. App. P. 39(a). (Covers 81-2331/3)

* * *

Office of the Secretary
TELEVISION RECEIVING SETS, MONOCHROME AND COLOR, FROM JAPAN

Determination of Sales at Less Than Fair Value

Information was received on March 22, 1968, that television receiving sets, monochrome and color, from Japan were being sold at less than fair value within the meaning of the Antidumping Act 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

A "Withholding of Appraisement Notice" issued by the Commissioner of Customs was published in the FEDERAL REGISTER of September 4, 1970.

I hereby determine that for the reasons stated below, television receiving sets, monochrome and color, from Japan are being, or likely to be, sold at less than fair value within the meaning of section 201(a) of the Act.

Statement of reasons on which this determination is based. The information currently before the Bureau reveals that the appropriate basis of comparison is between purchase price or exporter's sales price and adjusted home market price.

Purchase price was calculated on the basis of f.o.b. or f.o.r. packed prices with deductions for freight, packing, and other charges as applicable. The applicable Japanese commodity tax was added to this price.

Exporter's sales price was calculated by deducting from the resale prices of the related firms to distributors in the United States any applicable discounts to arrive at a net selling price. From the latter, appropriate deductions were made for inland freight in Japan, ocean freight and insurance, U.S. duty, brokerage charges, U.S. freight, warranty costs, packing, and commissions and other selling expenses incurred in the United States. To this additions were made for any applicable Japanese commodity tax refunded or not paid upon exportation of the merchandise.

Home market price was based on the delivered price to distributors in the home market. Appropriate deductions were

made for discounts and rebates granted for cash, quantities, and certain sales promotions. From the net price adjustments were made for commissions, warranty and installation costs, inland freight, inland insurance, patent fees, bad debts, where applicable, and packing. Adjustments were also made for differences in the merchandise, and for differences in advertising and credit costs.

Purchase prices or exporter's sales prices were lower than home market prices by amounts that were more than minimal in relation to the total volume of sales.

The U.S. Tariff Commission is being advised of this determination.

This determination is being published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-16531; Filed, Dec. 4, 1970; 11:49 a.m.]

FEDERAL REGISTER, VOL. 35, NO. 236 —
Saturday, December 5, 1970, Page 18549

PUBLIC INFORMATION

For release March 4, 1971

TARIFF COMMISSION FINDS TELEVISION RECEIVERS FROM JAPAN CAUSING INJURY

Dumping Duty to Be Imposed

The Tariff Commission today notified the Secretary of the Treasury that an industry in the United States is being injured by reason of imports from Japan of monochrome and color television receiving sets sold at less than fair value. The Commissioners voting were unanimous in their decision; Chairman Mize did not participate. As a result of the Commission's determination, television recievers from Japan sold at less than fair value will become subject to special dumping duties.

On December 4, 1970, the Treasury Department had advised the Commission that television receiving sets, monochome and color, from Japan are being, and are likely to be sold at less than fair value as defined in the Antidumping Act. The Treasury Department's advice was based on an investigation which it had instituted after receiving a complaint filed in March 1968 on behalf of the World Trade Committee, Parts Division, Electronic Industries Association. On receipt of Treasury's advice, the Commission had instituted an investigation (No. AA1921-66) to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established by reason of imports of such television receiving sets from Japan sold at less than fair value. A public hearing was held January 26-28, 1971.

U.S. imports of television receivers from Japan amounted to 3.3 million sets valued at $255 million in 1970. The imports from Japan accounted for about three-fourths of total U.S. imports of television sets in that year. Shipments of domestically produced television receivers amounted to about 7.8 million sets in 1970. Data on the value of domestic shipments in 1970 are not yet available, shipments in 1969 amounted to 8.9 million sets valued at $1.9 billion.

The Commission's report contains a statement of reasons for the determination. Copies of the report (TC Publication 367) are available upon request as long as the limited supply lasts. Requests should be addressed to the Secretary, U.S. Tariff Commission, 8th and E Sts., N.W., Washington, D.C. 20436.

UNITED STATES TARIFF COMMISSION
Washington

[AA1921-66]

TELEVISION SETS FROM JAPAN
Determination of Injury

The Assistant Secretary of the Treasury advised the Tariff Commission on December 4, 1970, that television receiving sets, monochrome and color, from Japan are being, and are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted Investigation No. AA1921-66 to determine whether an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on January 26-28, 1971. Notice of the investigation and hearing was published in the *Federal Register* of December 10, 1970 (35 F.R. 18768).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionaires, personal interviews, and other sources.

On the basis of the investigation, the Commission determined unanimously[1] that an industry in the United States is being injured by reason of the importation of television receiving sets, monochrome and color, from Japan sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

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1. Chairman Mize did not participate in the determination.

Statement of Reasons

In the Commission's judgment, an industry in the United States is being injured by reason of the importation of television receivers from Japan, which are being sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended.

In reaching this determination, three reasons have been persuasive: (1) Imports of television receivers from Japan, determined by the Treasury to have been sold at less than fair value, have increased and now supply a substantial share of the U.S. market; (2) the sellers of the LTFV Japanese receivers have for the most part undersold U.S. manufacturers of television sets in the domestic market; and (3) sales of the LTFV television sets have contributed substantially to declining prices of domestically produced television receivers.

The industry

The Commission has considered the injured industry to consist of the facilities in the United States for the production of television receivers. Television sets are currently manufactured in the United States by approximately 20 firms, most of which produce both monochrome and color sets in a wide range of screen sizes.

The imported product

Except for console-type television receivers, few of which are imported into the United States, imported television sets from Japan cover the broad range of types and sizes sold in the U.S. market. Both monochrome and color receivers in nearly all screen sizes are imported into the United States from Japan in large volume.

The U.S. market

Annual sales of television receivers in the United States ranged between 5.1 million and 7.6 million sets during the 1950's and early 1960's; they rose appreciably in the mid-1960's with

the advent of color television and averaged about 12.5 million sets in recent years. Sales in 1970 (12.2 million sets) were somewhat lower than those in the 2 preceding years (12.8-12.9 million sets).

In the past 3 years (1968-70), the U.S. market has been divided about equally between monochrome and color sets; annual sales of the monochrome sets have generally accounted for about 55 percent of total sales, and color sets, for 45 percent. Monochrome sets have been sold in substantial volume in a wide range of screen sizes, while color sets have been sold primarily in the larger screen sizes. In recent years, however, U.S. market demand for both monochrome and color receivers has shifted appreciably toward receivers having smaller screens. In 1970, for example, sales in the United States of monochrome receivers having screen sizes of 13 inches or less accounted for about 45 percent of total sales of monochrome sets, compared with 20 percent in 1965. Sales of large color receivers (screens of 20 inches or more) accounted for nearly 95 percent of total sales of color sets in 1965, but only 50 percent in 1970.

The competition in the U.S. market between domestic and Japanese television receivers has been sharpest in the middle screen sizes. Nearly all of the very large television sets sold in the United States have been produced domestically, while the great bulk of the very small sets have been imported. The market for receivers in sizes between those extremes, however, has been supplied by both Japanese and U.S. producers. Television sets in the middle sizes—i.e., sets having screens larger than 9 inches but less than 20 inches—accounted for more than half of the output of domestic receivers and nearly three-fourths of the imports of Japanese receivers in 1970. Thus, the competition in the U.S. market between the Japanese and the domestically produced middle-sized receivers affects a great part of U.S. production.

Data on the number of television sets produced in the United States and imported from Japan in 1965-70 are given in the following table.

Television receivers: U.S. production and imports from Japan, 1965-70

(Thousand units)

Description	1965	1966	1967	1968	1969	1970
Monochrome:						
Not over 13"						
U.S. production	1,166	1,376	949	1,016	831	640
Imports from Japan	575	632	791	1,164	1,594	1,724
Over 13" not over 16"						
U.S. production	511	610	405	408	478	329
Imports from Japan	141	158	110	158	212	206
Over 16"						
U.S. production	5,401	4,626	2,688	3,133	2,301	2,132
Imports from Japan	17	58	116	144	251	344
Color:						
Not over 16"						
U.S. production	33	233	332	444	550	558
Imports from Japan	24	13	121	404	467	492
Over 16"						
U.S. production	2,576	4,548	4,886	4,802	4,624	3,744
Imports from Japan	10	160	130	209	375	310

Market penetration

U.S. imports of Japanese television receivers have increasingly penetrated the U.S. market. In 1970, Japan supplied about 28 percent of the apparent U.S. consumption of television receivers, compared with 10 percent in 1965. In the more recent year, 36 percent of apparent consumption of monochrome receivers, and 16 percent of apparent consumption of color sets, consisted of Japanese receivers.

Substantial market penetration by Japanese television receivers has occurred in all of the middle screen sizes. Imports from Japan of monochrome sets having 10- to 13-inch screens, for example, increased rapidly in recent years; the imports supplied about 50 percent of the U.S. market in 1970, compared with 25 percent in 1965. Imports from Japan of monochrome sets having 17- to 19-inch screens accounted for 1 percent of the domestic market for such sets in 1965, but more than 15 percent in 1970. Aggregate U.S. production of monochrome receivers in the middle screen-size groups in 1970 was less than half of that in 1965,

evidencing both lost production and lost jobs. While this decline reflects in part the substitution of color for monochrome sets, it resulted in substantial part from the increasing imports of LTFV sets from Japan. In its investigation the Treasury found that the bulk of the Japanese monochrome sets having 10- to 16-inch screens, accounting for about a fourth of total supply of middle-sized monochrome receivers in the U.S. market, were sold at less than fair value.

Although the pattern of import penetration has been more erratic for color sets than for monochrome sets, imports from Japan of color sets have generally increased since 1965 and have taken a marked share of the U.S. market in the middle screen sizes. The Japanese share of the U.S. market for middle-sized color receivers was about 30 percent in 1970. In its investigation the Treasury found that virtually all of the Japanese color receivers having 14- to 19-inch screens, accounting for about a fifth of total supply of middle-size color receivers in the U.S. market, were sold at less than fair value.

Price effects

Information obtained by the Commission in the investigation indicates that the bulk of the television receivers imported from Japan have been sold in recent years in the United States at prices significantly lower than the prices of comparable domestic television receivers. Such underselling has been concentrated in certain of the middle screen sizes—the market area where competition between the Japanese and domestic sets has been most substantial and direct. The price differences were found to exist when comparing weighted average prices of Japanese-produced and domestically produced television receivers within narrow screen-size categories, as well as in instances where virtually identical sets (i.e., sets having comparable screens, cabinets, circuitry, and automatic tuning devices) could be compared. The LTFV margins were often equivalent to a substantial part of the margin of underselling in the United States; in other instances, the LTFV margin was found to be greater than the margin of underselling. In any event, the ability of the

Japanese suppliers to undersell domestic producers in the U.S. market appears to have been significantly enhanced as a result of the selling of Japanese sets at less than fair value. While margins of underselling in the U.S. market have generally diminished since 1967, perhaps in part as a response to the Treasury's investigation of allegations of LFTV [sic] sales, they have continued to be an important competitive factor in the market place.

Since 1967 the prices of major categories of domestically produced television receivers, both monochrome and color, have dropped substantially, particularly in the middle range of screen sizes. Weighted average prices of domestically produced sets in the middle screen sizes ranged as much as 25 percent lower in 1970 than in 1968. As indicated earlier, imports of television receivers from Japan at LTFV were a major factor in the U.S. market during that period, supplying a substantial and increasing share of apparent consumption. Under these circumstances, the LTFV imports clearly contributed in substantial measure to the price deterioration that has occurred in the domestic market for television receivers.

Conclusion

In the Commission's judgment, the imports of television receivers from Japan, sold at LTFV, have adversely affected the prices of comparable domestically produced receivers in the United States, and have caused substantial loss of sales by U.S. producers. Accordingly, we have unanimously determined that an industry in the United States is being injured by reason of such LFTV imports.